

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #3	CCRB Case #: 201801292	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/05/2017 4:10 AM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 6/5/2019	EO SOL 6/5/2019	
Date/Time CV Reported Tue, 02/20/2018 2:20 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/20/2018 2:20 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Ruben Leon	04232	930556	ESS 03
2. SDS Janette Cruz	02080	914329	INT CIS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Aramis Ramos	4521	942405	ESS 02
2. DTS Lenno Hendricks	04817	925441	E S U
3. SSA Donald Abrams	00085	921890	E S U
4. DTS Michael Gannon	4090	934896	ESS 07
5. DTS Edwin Espinal	4873	934831	SRG
6. DTS Robert Cruz	06987	941602	ESS 03
7. DTS Patrick Barry	00249	917283	E S U
8. DTS Terry Avent	01029	932280	E S U
9. DT2 Matthew Vahey	07959	907488	E S U

Officer(s)	Allegation	Investigator Recommendation
A.SDS Janette Cruz	Abuse: Sergeant Janette Cruz entered § 87(2)(g) in the Bronx.	
B.DTS Ruben Leon	Force: Detective Ruben Leon fired his gun at § 87(2)(b)	

### Case Summary

On February 20, 2018, § 87(2)(b) of § 87(2)(b), filed this complaint with the CCRB by telephone on behalf of § 87(2)(b) because § 87(2)(b) does not speak English. § 87(2)(b) was not witness to this incident.

On December 5, 2017, at approximately 4:00 AM, Sergeant Donald Abrams, Detective Lenno Hendricks, Detective Michael Gannon, Detective Robert Cruz, Detective Patrick Barry, Detective Terry Avent, and Detective Matthew Vahey, all of the Emergency Service Unit Apprehension Team (ESU A-Team) executed a search warrant at § 87(2)(b)'s home, located at § 87(2)(b), in the Bronx. The search warrant was taken out by the Strategic Response Group (SRG) Field Intelligence team, and supervised by Sergeant Janette Cruz (**Allegation A: Abuse of Authority**, § 87(2)(b)). After entering the apartment, Det. Leon and Det. Vahey entered the rear bedroom, where § 87(2)(b) was sleeping. § 87(2)(b)'s brother-in-law was allegedly standing in the bedroom with a machete. Det. Leon fired his gun at § 87(2)(b) striking and killing him (**Allegation B: Force**, § 87(2)(g)).

This case was originally assigned to Investigator Alfredo Gonzalez. This case was reassigned to Investigator Tessa Yesselman after Inv. Gonzalez's departure from the CCRB.

This case was placed on the CCRB's sensitive case list because of media coverage (**24 Board Review**).

There is no video evidence in regards to this incident.

No arrests were made or summonses issued as a result of this incident.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Janette Cruz entered § 87(2)(b) in the Bronx.**

It is undisputed that officers from the ESU A-Team entered § 87(2)(b), in the Bronx.

Search Warrant § 87(2)(b) (**14 Board Review**) was requested by Police Officer Juan Rodriguez, of SRG, and was supervised by Sergeant Janette Cruz, also of SRG. The warrant was signed by § 87(2)(b) on § 87(2)(b), to search § 87(2)(b). The warrant is no-knock authorized, and states that the officers may execute it at any time of day or night.

Patrol Guide Procedure 221-17 states a search warrant must be executed within ten days of issuance (**20 Board Review**).

§ 87(2)(g), § 87(2)(b)

**Allegation (B) Force: Detective Ruben Leon fired his gun at § 87(2)(b) (deceased).**

§ 87(2)(b) (01 Board Review) stated that on December 5, 2017, at approximately 4:30 AM, he was awakened by the sound of the front door to his apartment being forced open. § 87(2)(b) described the layout to his apartment as the following: immediately upon entering, there is a hallway. A bedroom is the first door off the hallway, followed by a bathroom, kitchen, and living room. There is a bedroom off of the living room, in the rear of the apartment. This bedroom was where § 87(2)(b) was asleep at the time he heard his front door being forced open. § 87(2)(b) s brother-in-law, was asleep in the living room on a bed close to the doorway to § 87(2)(b) s bedroom. The living room and § 87(2)(b) s bedroom were separated by a curtain. After § 87(2)(b) heard the noise of the door being opened, he observed an individual grab § 87(2)(b) by his chest, and lift him up. § 87(2)(b) could not describe the individual who picked § 87(2)(b) up, because it was dark and he could not see clearly. § 87(2)(b) did not hear anyone say anything. § 87(2)(b) stated that he is “a bit deaf.” § 87(2)(b) thought that the apartment was getting robbed, so he pulled the blankets over his head, and pretended to be asleep. The light turned on in § 87(2)(b) s room, and he heard § 87(2)(b) say, “What happened? Que pasa?” Less than one minute later, § 87(2)(b) heard a gunshot. § 87(2)(b) was still under the blanket, and did not see § 87(2)(b) enter his room, and did not see when § 87(2)(b) was shot. § 87(2)(b) did not hear anyone say that they were police officers. § 87(2)(b) did not hear anyone in the room make any statements regarding a machete. § 87(2)(b) still thought that the individuals in his apartment were robbers, so he remained under his covers. § 87(2)(b) heard whispering, but he could not make out what was being said. § 87(2)(b) felt someone touch his leg two or three times, in an attempt to wake him up or get his attention, but he remained under the covers, pretending to be asleep. At approximately 5:30 AM, police officers from the 40<sup>th</sup> Precinct woke § 87(2)(b) up, and at that point, § 87(2)(b) realized that the individuals in his apartment were police officers. § 87(2)(b) was then transported to the hospital. § 87(2)(b) later learned that the officers said § 87(2)(b) had a machete. § 87(2)(b) stated that the machete belonged to him, and that he had received it as a gift in 1975. § 87(2)(b) did not think that it was possible § 87(2)(b) could have been holding the machete at the time the officers were in the apartment because § 87(2)(b) kept the machete in his bedroom, in a closet. § 87(2)(b) did not know if § 87(2)(b) knew that he had the machete, or if he knew where the machete was kept.

Det. Leon (05 Board Review) stated that when he entered § 87(2)(b), he was assigned to the role of first bunker. The front door was breached using a hydraulic tool. When the door was opened widely enough, Det. Leon yelled, “Police, search warrant, get down.” Det. Leon was wearing a ballistics helmet and heavy vest, and was carrying a lighted glock and a level three ballistics shield. The shield can withstand the shot of a 9 millimeter. Det. Leon saw officers in the first room off the hallway in the apartment, and continued down the hallway, and entered the living room. Det. Leon had not seen civilians at this point. Det. Leon then entered the rear bedroom, located off of the living room. The room was dark. There was a window directly in front of Det. Leon. Det. Leon looked to the right, and saw an elderly male, asleep in a bed, later identified as § 87(2)(b). Det. Leon continued to look to the right, and saw a male he

perceived to be Hispanic, and in his 50's, later identified as § 87(2)(b) was standing in front of § 87(2)(b)'s bed. § 87(2)(b) was approximately five to six feet away from Det. Leon. Det. Vahey was standing behind Det. Leon. § 87(2)(b) was holding a machete at his hip. The blade from the machete reached from § 87(2)(b)'s hip, down to the ground. § 87(2)(b) was standing in a bladed stance, so that his side holding the machete was facing Det. Leon. Det. Leon yelled, "Police, drop the knife, drop the knife, drop the knife." Det. Leon also heard Det. Vahey yelling at § 87(2)(b) to drop the knife. § 87(2)(b) took a step towards Det. Leon, and raised the machete, so that the blade was now facing up, over his shoulder. Det. Leon fired his lighted glock, striking § 87(2)(b) in the chest. § 87(2)(b) immediately fell. Det. Leon did not remember if § 87(2)(b) fell to one knee, or on both knees. No other officers were in the room besides Det. Leon and Det. Vahey. § 87(2)(b) was still holding the machete. Det. Vahey picked something up from the ground, and hit the machete out of § 87(2)(b)'s hands. § 87(2)(b) fell face first on to the ground.

Two photographs of Det. Leon (**Board Review 22, Board Review 23**) show him wearing the ballistic helmet, heavy vest, and level three ballistic shield.

The TRI prepared in regards to Det. Leon's interaction with § 87(2)(b) was prepared by Sgt. Ginger Ortiz (**16 Board Review**), from the Force Investigations Division. The TRI shows that a firearm was discharged, that § 87(2)(b) was menacing and brandishing a weapon, and that the firearm was discharged in defense of self, and defense of other members of service. The firearm used was a 9 millimeter Glock 19, and the shot was intentionally fired. § 87(2)(b) was 5-6 feet away from Det. Leon when Det. Leon fired. One shot was fired, and that shot hit § 87(2)(b). Det. Leon was wearing a shield and vest. § 87(2)(b) died, and was removed to the hospital.

The UF-61 prepared in regards to Det. Leon's interaction with § 87(2)(b) was prepared by Det. Michael Centrone (**13 Board Review**), from the Force Investigations Division. The UF-61 shows that while Det. Leon was executing a search warrant inside of § 87(2)(b), officers ordered § 87(2)(b) to drop the sword from his hand, and § 87(2)(b) ignored the orders, and advanced towards Det. Leon. Det. Leon fired one round, striking § 87(2)(b) in his chest. § 87(2)(b) was transported to § 87(2)(b), where he was pronounced dead on arrival.

Det. Vahey (**07 Board Review**) provided a statement largely consistent with Det. Leon's. Det. Vahey stated that he entered § 87(2)(b), behind Det. Leon. Det. Leon was a bunker, meaning that he was carrying a shield. Det. Leon yelled, "Police, search warrant," as he entered the apartment. Det. Vahey and Det. Leon proceeded down the hallway inside of the apartment, and entered the living room, at the end of the hallway. Det. Vahey and Det. Leon entered the living room. There was a bedroom off of the living room. Det. Vahey learned during the tactical plan meeting before the execution of the warrant that the firearms and narcotics the search warrant was in regards to, were kept in the rear bedroom. Det. Leon entered the rear bedroom first. Det. Vahey entered after Det. Leon. There was a curtain in the doorway, separating the living room from the bedroom. Det. Vahey tore the curtain down as he entered the bedroom. Det. Vahey looked to the left. Det. Vahey observed a closet at the left end of the bedroom. Det. Vahey immediately heard Det. Leon say, "Put it down, put it down, put it down." Det. Vahey

turned and saw a male, later identified as § 87(2)(b) standing at the foot of the bed. § 87(2)(b) was holding what Det. Vahey thought was a sword. The blade of the sword was approximately two feet long. § 87(2)(b) was holding the sword at his hip, with the blade pointed up. § 87(2)(b) was facing Det. Leon. Det. Leon continued to yell, “Put it down,” at § 87(2)(b). Det. Vahey also yelled at § 87(2)(b) to drop the knife. § 87(2)(b) was approximately five to six feet away from Det. Leon. Det. Vahey was less than one foot away from Det. Leon. The male took a step towards Det. Leon, and Det. Leon shot his firearm, striking § 87(2)(b) in the chest. § 87(2)(b) fell to his knees, and was still holding the knife. Det. Vahey picked something up from the floor, and knocked the knife out of § 87(2)(b)'s hands. § 87(2)(b) fell face first on to the ground. Det. Vahey did not know what object he used to knock the knife out of § 87(2)(b)'s hands. Det. Vahey then used his foot to move the blade further away from Det. Vahey, so that nobody would hurt themselves on it. § 87(2)(b) was between the foot of the bed and the wall. Det. Vahey pulled § 87(2)(b) away from the bed, towards the center of the room, ripped his shirt off, and began rendering aid. No other officers were in the room at this point, besides Det. Vahey and Det. Leon.

Sgt. Abrams (**04 Board Review**) stated that he was in the kitchen when he heard an officer yell, “Drop it, drop it, drop it.” Sgt. Abrams did not hear any verbal response to this. Immediately after hearing this, Sgt. Abrams heard a gunshot. Sgt. Abrams left the kitchen, and walked to the rear bedroom, where he heard the shot come from. Det. Leon left the bedroom as Sgt. Abrams entered. Det. Vahey was inside. § 87(2)(b) was on the ground, with a wound to his chest. The bedroom was well lit at this time. There was a “large cutting instrument” next to § 87(2)(b) on the ground. Sgt. Abrams commanded Det. Vahey to begin rendering aid, and Det. Vahey did so.

The ESU report (**12 Board Review**) prepared by Sgt. Abrams states that the apprehension team, using heavy weapons, ballistic protection, and entry tools, made entry into § 87(2)(b), the search warrant location. While inside, the primary shield team, Det. Leon and Det. Vahey, encountered a male, § 87(2)(b) brandishing a large machete. Det. Leon and Det. Vahey told § 87(2)(b) to drop the machete multiple times, and § 87(2)(b) lunged towards Det. Leon and Det. Vahey. Det. Leon discharged one round, using a department issued 9 millimeter Glock, which struck § 87(2)(b) in the chest.

Det. Barry (**06 Board Review**) stated that he was in the living room with Sgt. Abrams and Det. Gannon. Det. Barry heard an officer yell, “Drop it, drop it, drop it,” and then heard a shot go off, from the bedroom off of the living room. Det. Barry walked into the bedroom. Det. Leon and Det. Vahey were inside of the bedroom. No other officers entered the bedroom with Det. Barry. Det. Barry observed § 87(2)(b) on the ground with a wound to his chest. Det. Barry had not seen any civilians inside of the apartment up until this point. There was also an elderly male asleep in a bed inside of the bedroom. Det. Vahey was rendering aid to § 87(2)(b). There was a large machete directly next to Det. Vahey. Det. Barry put his foot on the blade and moved it away from Det. Vahey, so that Det. Vahey would not injure himself, because he was on the floor on his knees.

Det. Ramos (**03 Board Review**) stated that he was in the living room, when he heard Det. Leon say, “Drop it, drop it, drop it,” or, “Put it down, put it down, put it down.” Det. Ramos then heard

a “pop.” Det. Ramos entered the bedroom, and saw § 87(2)(b) on the ground, by the corner of the bed, with a large machete in one of his hands. Det. Ramos did not know which hand the machete was in. The blade was as long as Det. Ramos’ arm. Det. Ramos exited the bedroom, and continued to clear the rest of the rooms of the apartment. Det. Ramos went back into the bedroom shortly after. Det. Vahey was rendering aid to § 87(2)(b)

On June 4, 2018, the Use of Force Review Board met to review the investigation of this case, which was investigated internally by the NYPD’s Force Investigation Division, FID Zone 1 #17-32 (**15 Board Review**). The board was chaired by the First Deputy Commissioner, and the panel members were the Chief of Department, the Chief of Training, Executive Officer Personnel Bureau, the Command Officer of the Legal Bureau, the Executive Officer of the Transit Bureau, and the Commanding Officer of the Firearms and Tactics Section. The board found that Det. Leon acted within department guidelines, and recommended that the investigation be closed with no disciplinary action taken against Det. Leon.

The Laboratory Report prepared by the Office of Chief Medical Examiner conducted a DNA test of the textured area of the handle from the blade recovered from § 87(2)(b) (**02 Board Review**). The report found that the DNA profile matched § 87(2)(b) and found that § 87(2)(b) was 84% of the sample. The DNA sample is approximately 1.57 quadrillion times more probable to have come from § 87(2)(b) and two other individuals than from three unknown people.

The Laboratory Report prepared by the Office of Chief Medical Examiner conducted an additional DNA test of the blade recovered from § 87(2)(b) (**02 Board Review**). The report found that § 87(2)(b)’s DNA was found on swabs taken from the “edge of the blade.” There were three DNA contributors found on the blade. § 87(2)(b) was 75% of the mixture. The DNA mixture from the swabs is approximately 2.32 quadrillion times more probable to have come from § 87(2)(b) and two other individuals than three unknown people. The DNA samples do not say when § 87(2)(b)’s DNA came to be on the machete.

The autopsy report (**21 Board Review**) shows that § 87(2)(b) sustained a penetrating gunshot wound of his torso with injury of heart and left lung, fracture of sternum, multiple rib fractures, hemothoraces, and a bullet was recovered. § 87(2)(b)’s cause of death was gunshot wound of torso, and the manner of death is classified as a homicide, shot by the police.

Patrol Guide Procedure 221-01 states: The use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death (**19 Board Review**).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (**17 Board Review**).
- This is the first CCRB complaint to which § 87(2)(b) has been party (**18 Board Review**).
- Sgt. Cruz has been a member of service for twenty five years, and has thirty one previous allegations. In CCRB case 200511589, an allegation of abuse of authority, refusal to provide name and shiled number was substantiated against Sgt. Cruz. The CCRB recommended instructions, and the NYPD gave Sgt. Cruz instructions. Sgt. Cruz has one previous allegation of abuse of authority, premises entered and/or searched. Sgt. Cruz also has one additional open CCRB complaint, also with the allegation of abuse of authority, entry of premises.
- Det. Leon has been a member of service for sixteen years and has four previous allegations, and no substantiations. Det. Leon has one previous physical force (pepper spray) allegation.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.

- § 87(2)(b)  
[REDACTED]
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)  
[REDACTED]
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)  
[REDACTED]

Squad No.: 3

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date